

**IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER**

IN THE MATTER OF: MELLER EXCAVATING & ASPHALT, INC. Lee County, Iowa	ADMINISTRATIVE CONSENT ORDER NO. 2011-AQ- 22 NO. 2011-SW- 25
--	---

TO: Glen Meller, Registered Agent
Meller Excavating & Asphalt, Inc.
3321 190th Street
Fort Madison, Iowa 52627

I. SUMMARY

This administrative consent order is entered into between the Iowa Department of Natural Resources (DNR) and Meller Excavating & Asphalt, Inc. (Meller) for the purpose of resolving the air quality and solid waste disposal violations which occurred during the demolition and disposal of residential structures and a commercial building in Fort Madison, Iowa. In the interest of avoiding litigation, the parties have agreed to the provisions below.

Questions regarding this administrative consent order should be directed to:

Relating to technical requirements: Relating to legal requirements:

Aaron Pickens, Field Office 6
Iowa Department of Natural Resources
1023 W. Madison
Washington, Iowa 52353-1623
Phone: 319/653-2135

Kelli Book, Attorney for the DNR
Iowa Department of Natural Resources
7900 Hickman Road, Suite 1
Windsor Heights, Iowa 50324
Phone: 515/281-8563

Payment of penalty to:

Iowa Department of Natural Resources
Henry A. Wallace Building
502 East Ninth Street
Des Moines, Iowa 50319-0034

II. JURISDICTION

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MELLER EXCAVATING & ASPHALT, INC.

Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this administrative consent order.

III. STATEMENT OF FACTS

1. Meller provides professional excavating, asphalt, and demolition services in the Fort Madison area.

2. On April 13, 2011 and on April 15, 2011, DNR Field Office 6 received complaints alleging that Meller demolished three houses and a brick garage in Fort Madison and took a portion of the demolition debris to the landfill but the majority of the debris was taken to Meller's property located at 3321 190th Street, Fort Madison, Iowa where it was being dumped and burned. On April 15, 2011, the complainant stated that the fire was still burning.

3. On April 19, 2011, Bert Noll and Aaron Pickens, DNR Field Office 6 environmental specialists, investigated the complaint. The field office personnel went to Glen Meller's residence and Meller's business headquarters located at 3321 190th Street, Fort Madison. Mr. Pickens spoke to Craig Meller, Glen Meller's son, regarding the complaint. Craig Meller explained that Meller had been hired as a subcontractor under Merit Construction Co. to demolish three houses and a commercial building, all owned by Pilot Grove Savings Bank. Craig Meller stated that he thought most of the demolition debris had been taken to the landfill with the exception of the brick and concrete which was being disposed of on Meller's property north of the shop. A review of the paperwork indicated that proper asbestos inspection, notification, and abatement had been completed for the project and several disposal receipts were provided to the field office personnel. The field office personnel proceeded on Meller's property north of the shop. They discovered a large pile of demolition waste smoldering near a ravine. Field office personnel observed a mix of wood, brick, concrete, and other solid waste consistent with demolition waste. The field office personnel also observed ashes around the area. As the field office personnel approached the shop area they observed old trailer bodies full of ashes and miscellaneous solid waste. The area appeared to be used to contain the burning of all types of solid waste. The field office personnel again spoke with Craig Meller about what they saw during the inspection. The field office personnel instructed Craig Meller to immediately cease the burning and to properly dispose of the demolition waste. As the field office personnel was speaking to Craig Meller, a dump truck with Meller markings delivered a load of demolition waste to the property. The field office personnel informed Craig Meller that a letter and possible referral would be coming from the DNR.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MELLER EXCAVATING & ASPHALT, INC.

4. The field office personnel visited the demolition sites in Fort Madison (1801, 1807, 1811, and 1815 Avenue H). Demolition debris remained on the sites. The field office personnel spoke to Glen Meller regarding the complaints. He stated that the demolition waste had been taken to the landfill for disposal and the concrete and brick were taken to his property to use as fill. The field office personnel informed Glen Meller that a letter possible referral would be coming from the DNR.

5. On April 27, 2011, DNR issued a Notice of Violation letter to Meller for the open burning and improper solid waste disposal violations observed on April 19, 2011. The letter required that all burning must stop immediately and that all remaining solid waste and ashes must be deposited at a landfill. The letter informed Meller that the matter was being referred for further enforcement. On May 20, 2011, Meller submitted the disposal receipts for the disposal of the remaining solid waste and ashes.

6. On June 16, 2011, DNR Field Office 6 received a complaint alleging that Meller had dumped solid waste on his property. The complainant alleged that the solid waste debris came from a demolition project at 1801 Avenue H in Fort Madison. On July 7, 2011, Mr. Pickens visited Meller's property. Mr. Pickens observed that the solid waste and ashes had been removed. The Meller employees stated that no demolition had occurred at the site in Fort Madison for several weeks. Mr. Pickens did not find any violations based on the complaint received June 16, 2011.

7. Meller has been notified of the air quality and solid waste regulations in the past. On October 20, 1997, Meller was issued a Notice of Violation letter for asbestos violations in connection with a demolition project in Fort Madison. On November 25, 1998, Meller was issued a Notice of Violation letter for improper solid waste disposal of solid waste at its facility. The letter explained the regulations and stated that the solid waste could not be burned or buried. On November 1, 1999 Meller was issued a Notice of Violation letter for open burning trees from demolition projects at its facility. The letter explained the regulations and stated future violations may result in compliance actions. On July 25, 2000, Meller was issued two Notice of Violation letters for asbestos violations in connection with a demolition project in Keokuk, Iowa. On March 22, 2004, Meller was issued a Notice of Violation letter for open burning and improper solid waste disposal in connection with a residential demolition project in Fort Madison. The letter explained the regulations.

IV. CONCLUSIONS OF LAW

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MELLER EXCAVATING & ASPHALT, INC.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). On April 19, 2011, DNR Field Office 6 personnel observed that demolition waste from a demolition project in Fort Madison had been dumped and burned at Meller's facility. The debris was smoldering when the field office personnel arrived and ashes were observed in the area along with two trailers full of ashes and other solid waste. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. On April 19, 2011, DNR Field Office 6 personnel observed that demolition waste from a demolition project in Fort Madison had been dumped and burned at Meller's facility. A portion of the demolition debris was burned instead of being disposed of at the landfill. The above facts demonstrate noncompliance with this provision.

V. ORDER

THEREFORE, it is hereby ordered and Meller agrees to do the following:

1. Meller shall immediately cease all open burning unless the burning is exempted by regulation;
2. Meller shall immediately cease all improper waste disposal; and
3. Meller shall pay a penalty of \$10,000.00 within 30 days of the date the Director signs this administrative consent order.

VI. PENALTY

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to Iowa Code section 455B.146A. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MELLER EXCAVATING & ASPHALT, INC.

cited violations is the issuance of an administrative consent order with an \$10,000.00 penalty. The administrative penalty assessed by this administrative consent order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to follow the proper solid waste disposal regulations by the improper open burning and disposal of the houses and commercial building has allowed Meller to save time and money. Significant savings was achieved by burning the demolition debris rather than taking it all to the landfill. It is estimated that the burning reduced the landfill fees by half. Therefore an additional 108 tons of solid waste disposal fees were avoided at an estimated \$38.00 per ton for an estimated savings of \$4,104.00. Based on the above considerations, \$4,000.00 is assessed for this factor.

Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Therefore, \$3,000.00 is assessed for this factor.

Culpability - Meller has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that its conduct is subject to DNR's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Meller has received numerous Notice of Violation letters in the past for similar violations and each of the letters explained the regulations. Based on the above considerations, \$3,000.00 is assessed for this factor.

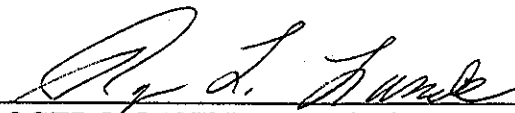
VII. WAIVER OF APPEAL RIGHTS

This administrative consent order is entered into knowingly and with the consent of Meller. For that reason, Meller waives the rights to appeal this order or any part thereof.

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER
ISSUED TO: MELLER EXCAVATING & ASPHALT, INC.

VIII. NONCOMPLIANCE

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.



ROGER L. LANDE, DIRECTOR
Iowa Department of Natural Resources

Dated this 23rd day of
August, 2011.



Meller Excavating & Asphalt, Inc.

Dated this 18 day of
August, 2011.

Barb Stock (Con 10-6 Lee County); Kelli Book; DNR Field Office 6; VI.C and VII.C.1